



Application No. 09/654,571  
Appeal Brief Dated 25 July 2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent application of :  
Christopher M. Rowden : Group Art Unit 2671  
Application No. 09/654,571 : Examiner Cliff N. Vo  
Filed 1 September 2000 :  
**METHOD AND SYSTEM OF PRODUCING A LANDSCAPE PLAN**

**APPEAL BRIEF**

U.S. Patent and Trademark Office  
220 20th Street S.  
Customer Window, **Mail Stop Appeal Brief – Patents**  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Sir:

In response to the Office Action dated 28 December 2005, twice rejecting pending claim 3, and in support of the Notice of Appeal filed on 24 April 2006, Applicants hereby submit this Appeal Brief.

**Real Parties in Interest**

Christopher M. Rowden is the inventor and owns all of the rights in the above-identified U.S. patent application.

**Related Appeals and Interferences**

There are no other appeals or interferences related to this application or to any related application, nor will the disposition of this case affect, or be affected by, any other application directly or indirectly.

**Status of Claims**

Claims 1-16 (Pending).

Claim 17 (Canceled).

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Claims 18-20 (Pending).

Claim 3 has been twice rejected. Accordingly, the claims on Appeal are 1-16 and 18-20.

### **Status of Amendments**

There are no pending amendments with respect to this application.

### **Summary of Claimed Subject Matter**

The present invention is directed to a process for producing a landscape plan for a property.

As broadly recited in claim 1, a process (FIG. 1 – 100) for producing a landscape plan for a real property comprises: defining a set of generic plant categories (110 – page 5, line 16 – page 6, line 20); assigning a corresponding unique symbol to each generic plant category, defining a set of unique symbols (120; see FIG. 4; page 6, line 21 – page 7, line 11); communicating from a first party to a second party a survey of the real property (see FIG. 2), a photograph of the real property, and a list of desired landscape characteristics for the real property (140; page 8, lines 8-11); and the second party generating the landscape plan for the real property, the landscape plan using the unique symbols to indicate locations on the real property where plants should be located (150; see FIG. 3; page 10, line 18 – page 11, line 9).

As broadly recited in claim 2, the generic plant categories are defined according to a plant size (page 5, line 18; Table 1).

As broadly recited in claim 3, a process (FIG. 1 -100) for producing a landscape plan for a property comprises: defining a set of generic plant categories (110 – page 5, line 16 – page 6, line 20); assigning a corresponding unique symbol to each generic plant category, defining a set of unique symbols (120; see FIG. 4; page 6, line 21 – page 7, line 11); receiving from a customer a survey of the property (see FIG. 2), a photograph of the property, and a list of desired landscape characteristics for the property (140; page 8, lines 8-11); and generating the landscape plan for the property,

the landscape plan using the unique symbols to indicate locations on the property where plants should be located (150; see FIG. 3; page 10, line 18 – page 11, line 9), wherein the generic plant categories are defined according to a plant size and a leaf texture (see Table 1; page 5, line 18 – page 6, line 1).

As broadly recited in claim 4, the set of generic plant categories is divided into a first subset of generic plant categories corresponding to deciduous plants, and a second subset of generic plant categories corresponding to evergreen plants (page 6, lines 1 and 17-19).

As broadly recited in claim 5, the unique symbols identify the deciduous plants and the evergreen plants (page 7, lines 7-9).

As broadly recited in claim 6, the process further comprises assigning a second set of unique symbols each corresponding to a type of hardscape material (130; page lines 12-17), wherein the landscape plan uses the second set of unique symbols to indicate hardscape materials to be used for hardscape elements indicated on the landscape plan (see FIG. 3; page 11, lines 5-9).

As broadly recited in claim 7, the landscape plan includes a legend identifying each symbol (page 11, lines 10-14; see FIG. 4).

As broadly recited in claim 8, the process further comprises providing a list of specific plants belonging to each generic plant category (page 11, line 18 – page 12, line 7).

As broadly recited in claim 9, a process for producing a landscape plan for a property comprises: defining a set of generic plant categories according to at least one of the following plant characteristics: plant height, plant diameter, leaf texture, and whether a plant is deciduous or evergreen (110 – page 5, line 16 – page 6, line 20); assigning a symbol to each generic plant category (120; see FIG. 4; page 6, line 21 – page 7, line 11); and producing the landscape plan by indicating via the symbols locations for plants on the property (150; see FIG. 3; page 10, line 18 – page 11, line 9).

As broadly recited in claim 10, the generic plant categories are defined according to at least one of a plant height and a plant width (page 5, line 18; Table 1).

As broadly recited in claim 11, the generic plant categories are defined according to a leaf texture (page 5, line 18 – page 6, line 1; Table 1).

As broadly recited in claim 12, the set of generic plant categories is divided into a first subset of generic plant categories corresponding to deciduous plants, and a second subset of generic plant categories corresponding to evergreen plants (page 6, lines 1 and 17-19).

As broadly recited in claim 13, the unique symbols identify the deciduous plants and the evergreen plants (page 7, lines 7-9).

As broadly recited in claim 14, the process further comprises assigning a second set of unique symbols each corresponding to a type of hardscape material (130; page lines 12-17), wherein the landscape plan uses the second set of unique symbols to indicate hardscape materials to be used for hardscape elements indicated on the landscape plan (see FIG. 3; page 11, lines 5-9).

As broadly recited in claim 15, the landscape plan includes a legend identifying each symbol (page 11, lines 10-14; see FIG. 4).

As broadly recited in claim 16, the process further comprises providing a list of specific plants belonging to each generic plant category (page 11, line 18 – page 12, line 7).

As broadly recited in claim 18, a process for producing a landscape plan for a property comprises: defining a set of symbols, each symbol corresponding to a generic landscape element (120, 130; see FIG. 4; page 8, lines 1-7); and producing the landscape plan by indicating via the symbols locations for the generic landscape elements on the property (150; page 10, line 18 – page 11, line 2), wherein the set of symbols includes a first subset of symbols corresponding to a set of generic plant categories, and a second subset of symbols corresponding to a type of hardscape material (see FIG. 4; page 6, lines 21- page 7, line 19; page 11, lines 2-9).

As broadly recited in claim 19, the generic plant categories are defined according to at least one of the following plant characteristics: plant height, plant diameter, leaf texture, and whether a plant is deciduous or evergreen (page 5, line 16 – page 6, line 1).

As broadly recited in claim 20, the set of generic plant categories is defined according to at least one of the following plant characteristics: plant height, plant diameter, leaf texture, and whether a plant is deciduous or evergreen (page 5, line 16 – page 6, line 1).

**Grounds of Rejection to be Reviewed on Appeal**

The Grounds of Rejection to be reviewed on Appeal are:

- (1) The rejection of claims 1-16 and 18-20 under 35 U.S.C. § 101;
- (2) The rejection of claims 9-11 and 15-16 over Doerr.

**Arguments**

**Claims 1-16 and 18-20 Are All Patentable Under 35 U.S.C. § 101**

The Office Action states – without further citation or explanation - that claims 1-16 and 18-20 are unpatentable under 35 U.S.C. § 101 because:

*“they simply recite a process for producing a landscape plan for a property which comprises steps which are not executed by a computer system. Accordingly, the claims are directed to non-statutory subject matter.”*

Applicant respectfully submits that this rejection is so preposterous as to hardly require retort! 35 U.S.C. § 101 states that:

*“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.”*

The Office Action admits that claims 1-16 and 18-20 are each directed to a process.

There is no allegation in the Office Action that the process is not useful. Indeed, Applicant respectfully submits that the process is very useful for facilitating the development of landscape plans in situations where heretofore such plans were not practical.

So how can the useful processes of claims 1-16 and 18-20 possibly be “non-statutory subject matter?”

Furthermore, it is absurd to state or suggest that a useful process is non-statutory subject matter because it “*comprises steps which are not executed by a computer system.*” First off, there is absolutely nothing in 35 U.S.C. § 101 that requires, or even mentions, a computer system. Second, the number of issued and presumably-valid U.S. patents that include claims to methods and processes that have steps “*which are not executed by a computer system*” must number in the millions. Surely it cannot be true that all of these patents are invalid!

Meanwhile, the processes of claims 1-16 and 18-20 are not directed to laws of nature, physical phenomena, or abstract ideas. Indeed, each of the claims produces a physical, tangible output – a landscape plan (see, e.g., FIG. 3 of Applicant’s application for an exemplary output of the claimed processes).

Meanwhile, to the extent the Examiner is rejecting claims 1-16 and 18-20 under some unstated “technological arts” basis, Applicant respectfully cites Ex parte Lundgren, Appeal No. 2003-2088, where this Board has already stated unequivocally that there is no separate “technological arts” requirement for a claim to be directed to statutory subject matter.

Therefore, for at least these reasons, Applicant respectfully submits that claims 1-16 and 18-20 are all clearly statutory subject matter under 35 U.S.C. § 101. Accordingly, Applicant respectfully requests that the rejections of claims 1-16 and 18-20 under 35 U.S.C. § 101 all be reversed.

**Claims 9-11 and 15-16 Are All Patentable Under 35 U.S.C. § 102**

Applicant respectfully submits that all of the claims 9-11, and 15-16 are patentable over Doerr for at least the following reasons.

Claim 9

Among other things, the method of claim 9 includes producing a landscape plan by indicating via symbols locations for plants on a property.

Applicant respectfully submits that Doerr does not disclose any process that produces a landscape plan. More specifically, Applicant respectfully submits that Doerr does not disclose any process that produces a landscape plan by indicating via symbols locations for plants on a property.

The Examiner cites col.3, line 66 through col. 4, line 5 of Doerr, as supposedly disclosing producing a landscape plan by indicating via symbols locations for plants on a property.

Applicant respectfully disagrees. Here is the text at col.3, line 66 through col. 4, line 5 of Doerr:

*"Preferably, whenever a picture of the plant is shown on a tag label or sign, the plant is shown in bloom and representative size to help the customer to visualize the plant in the desired location. Thus, the present invention permits the customer to easily identify appropriate locations for each plant with respect to the height, spread, bloom time, texture and color of the particular plant."*

Conspicuously absent from this text are any mention whatsoever of any **landscape plan**, and particularly of producing a landscape plan **by indicating via symbols locations for plants on a property**. It is evident that the cited text does not disclose or even suggest producing a landscape plan by indicating via symbols locations for plants on a property.

Therefore, for at least these reasons, Applicant respectfully submits that claim 9 is patentable over Doerr. Accordingly, Applicant respectfully requests that the rejection of claim 9 under 35 U.S.C. § 102 be reversed.

Claims 10-11

Claims 10-11 depend from 9 and are deemed patentable for at least the reasons

set forth above with respect to claim 9. Accordingly, Applicant respectfully requests that the rejections of claims 10-11 under 35 U.S.C. § 102 be reversed.

Claims 15-16

Claims 15-16 depend from claim 9 and are deemed to be patentable for at least the reasons set forth above with respect to claim 9, and for the following additional reasons.

Claim 15

Among other things, the process of claim 15 includes producing a landscape plan that includes a legend identifying each symbol.

At the outset, as explained above with respect to claim 9, Doerr does not even disclose producing any landscape plan. So it is not possible for Doerr to disclose producing a landscape plan that includes a legend identifying each symbol.

The Office Action cites col. 3, lines 62-65 of Doerr as supposedly disclosing producing a landscape plan including a legend identifying each symbol.

Applicant respectfully disagrees. The text at col. 3, lines 62-65 of Doerr refers to FIG. 6. FIG. 6 shows an instruction sheet, not a landscape plan. So it is not possible for FIG. 6 or the text at col. 3, lines 62-65 to disclose producing a landscape plan including a legend identifying each symbol.

Therefore, for at least these additional reasons, Applicant respectfully submits that claim 15 is patentable over Doerr. Accordingly, Applicant respectfully requests that the rejection of claim 15 under 35 U.S.C. § 102 be reversed.

Claim 16

Among other things, the process of claim 16 includes providing a list of specific plants belonging to each generic plant category.

Applicant respectfully submits that Doerr does not disclose such a feature.

The Examiner cites col.2, lines 51-57 of Doerr, as supposedly disclosing providing a list of specific plants belonging to each generic plant category.

Applicant respectfully disagrees. The cited text makes no mention of any lists of plants, and particularly of a list of specific plants belonging to each generic plant category.



Accordingly, withdrawal of the rejection of claim 16 is respectfully suggested.

**CONCLUSION**

In view of the foregoing explanations, Applicant respectfully requests that the Board reverse the rejections of claims 1-16 and 18-20, and pass the application to issue.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 50-0238 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17, particularly extension of time fees.

Respectfully submitted,

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Date: 25 July 2006

By: \_\_\_\_\_



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### **Appendix - Claims on Appeal**

1. (Previously Presented) A process for producing a landscape plan for a real property, comprising:

defining a set of generic plant categories;  
assigning a corresponding unique symbol to each generic plant category,  
defining a set of unique symbols;  
communicating from a first party to a second party a survey of the real property, a photograph of the real property, and a list of desired landscape characteristics for the real property; and  
the second party generating the landscape plan for the real property, the landscape plan using the unique symbols to indicate locations on the real property where plants should be located.

2. (Original) The process of claim 1, wherein the generic plant categories are defined according to a plant size.

3. (Previously Presented) A process for producing a landscape plan for a property, comprising:

defining a set of generic plant categories;  
assigning a corresponding unique symbol to each generic plant category,  
defining a set of unique symbols;  
receiving from a customer a survey of the property, a photograph of the property, and a list of desired landscape characteristics for the property; and  
generating the landscape plan for the property, the landscape plan using the unique symbols to indicate locations on the property where plants should be located,  
wherein the generic plant categories are defined according to a plant size and a leaf texture.

4. (Previously Presented) The process of claim 1, wherein the set of generic plant categories is divided into a first subset of generic plant categories corresponding to deciduous plants, and a second subset of generic plant categories corresponding to evergreen plants.

5. (Original) The process of claim 4, wherein the unique symbols identify the deciduous plants and the evergreen plants.

6. (Original) The process of claim 1, further comprising assigning a second set of unique symbols each corresponding to a type of hardscape material, wherein the landscape plan uses the second set of unique symbols to indicate hardscape materials to be used for hardscape elements indicated on the landscape plan.

7. (Original) The process of claim 1, wherein the landscape plan includes a legend identifying each symbol.

8. (Original) The process of claim 1, further comprising providing a list of specific plants belonging to each generic plant category.

9. (Previously Presented) A process for producing a landscape plan for a property, comprising:

defining a set of generic plant categories according to at least one of the following plant characteristics: plant height, plant diameter, leaf texture, and whether a plant is deciduous or evergreen;

assigning a symbol to each generic plant category; and

producing the landscape plan by indicating via said symbols locations for plants on said property.

10. (Previously Presented) The process of claim 9, wherein the generic plant categories are defined according to at least one of a plant height and a plant width.

11. (Original) The process of claim 10, wherein the generic plant categories are defined according to a leaf texture.

12. (Previously Presented) The process of claim 9, wherein the set of generic plant categories is divided into a first subset of generic plant categories corresponding to deciduous plants, and a second subset of generic plant categories corresponding to evergreen plants.

13. (Original) The process of claim 12, wherein the unique symbols identify the deciduous plants and the evergreen plants.

14. (Original) The process of claim 9, further comprising assigning a second set of unique symbols each corresponding to a type of hardscape material, wherein the landscape plan uses the second set of unique symbols to indicate hardscape materials to be used for hardscape elements indicated on the landscape plan.

15. (Original) The process of claim 9, wherein the landscape plan includes a legend identifying each symbol.

16. (Original) The process of claim 9, further comprising providing a list of specific plants belonging to each generic plant category.

17. (Canceled).

18. (Previously Presented) A process for producing a landscape plan for a property, comprising:

defining a set of symbols, each symbol corresponding to a generic landscape element; and

producing the landscape plan by indicating via said symbols locations for the generic landscape elements on said property,

wherein the set of symbols includes a first subset of symbols corresponding to a set of generic plant categories, and a second subset of symbols corresponding to a type of hardscape material.

19. (Previously Presented) The process of claim 18, wherein the generic plant categories are defined according to at least one of the following plant characteristics: plant height, plant diameter, leaf texture, and whether a plant is deciduous or evergreen.

20. (Previously Presented) The process of claim 1, wherein the set of generic plant categories is defined according to at least one of the following plant characteristics: plant height, plant diameter, leaf texture, and whether a plant is deciduous or evergreen.

**Evidence Appendix**

{None}

**Related Proceedings Appendix**

{None}